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GMS Flash Alert

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United States – American Rescue Plan Passes, Bill Signing Expected Friday

On Wednesday, March 10, 2021, the United States ("U.S.") House of Representatives voted to approve the "American Rescue Plan Act of 2021," ("the Act"), a $1.86 trillion COVID-19 relief and stimulus package. The Act has passed both chambers of Congress and U.S. President Biden is expected to sign the bill into law this Friday, March 12, 2021.[1] The Act contains several tax provisions intended to bring some economic and fiscal relief to companies, small businesses, and individuals facing financial difficulties due to the ongoing coronavirus pandemic. The provisions most likely to impact global mobility programs and international assignees are highlighted in this *GMS Flash Alert*.[2]

WHY THIS MATTERS

The Act contains new and expanded individual income tax credits that might provide potential offsets against assignee tax liability and cost to mobility programs. The impact on assignment costs will depend on an assignee's tax residency, place of abode, and income level.

2021 Recovery Rebates to Individuals

The Act adds a new section to the Internal Revenue Code ("the Code" or "I.R.C."),[3] which provides for a new recovery rebate credit that will be paid as an advance refund in order to get funds to eligible taxpayers quickly. While the Act's recovery rebate amount is larger than the recovery rebate credits included in the 2020 COVID-19 relief packages,[4] and provides a benefit for non-child dependents, the credit phase-out is much lower than the 2020 recovery rebate credits.

All U.S. citizens and residents with adjusted gross income ("AGI") up to $75,000 ($112,500 for head of household; $150,000 for married couples filing jointly), who are not a dependent of another taxpayer and who have a work-eligible Social Security Number ("SSN"), are eligible for a refundable credit of up to $1,400 ($2,800 if married couple filing jointly) on their 2021 federal income tax returns. The credit is increased by an additional $1,400 for each dependent (including adult dependents, who were not included in the 2020 stimulus packages) of the taxpayer with a valid SSN or Adoption Taxpayer Identification Number ("ATIN") issued on or before the due date for filing the 2021 tax return.[5]

KPMG NOTE

The recovery rebate credit is not available to any individual who is a nonresident individual, nor to any individual who can be claimed as a dependent on another's return, nor to estates and trusts. It is important to note the requirement that eligible individuals and their dependents must have SSNs (or ATINs), although there is an exception for military spouses. As such, certain inbound assignees to the United States may not be entitled to the credit or may not be entitled to a credit for their dependents. Additionally, for earlier recovery rebate credits that were paid out as Economic Impact Payments, the Internal Revenue Service ("IRS") has instructed any nonresident alien in 2020 who received an advance payment based on 2018 or 2019 information to return the advance payment. Presumably, the IRS will issue similar guidance for this new advance payment. As such, companies may want to track assignees who qualify for the payment based on 2019 and 2020 information but are not expected to be eligible individuals based on 2021 assignment details.

Phase-out

The credit is completely phased out for single filers with AGI exceeding $80,000 ($120,000 for head of household; $160,000 for married couples filing jointly). As such, higher-earning taxpayers who qualified for the recovery rebate credits in the 2020 COVID-19 relief packages may not qualify for the 2021 recovery rebate credit.

KPMG NOTE

The 2020 recovery rebate credit amounts were phased out at $5 for every $100 a taxpayer's AGI exceeded the applicable threshold, meaning taxpayers with qualifying children had a higher phase-out threshold than taxpayers with no children. This phase-out mechanism allowed relatively high-earning taxpayers to qualify for a partial credit amount. The 2021 recovery rebate has a very different phase-out mechanism, which, as mentioned above, completely phases out the credit for all taxpayers with AGI above a ceiling amount based on filing status, regardless of the number of dependents claimed on a taxpayer's return. As illustrated in the table below, this lower phase-out threshold significantly reduces the likelihood that an employee whose compensation includes assignment allowances will qualify for the recovery rebate credit.

	Recovery rebate credit fully phases out if AGI exceeds:		
	2021 $1,400 credit	**2020 $600 credit***	**2020 $1,200 credit***
Single/Married Filing Separately	$80,000	$87,000	$99,000
Married Filing Jointly	$160,000	$174,000	$198,000
Head of Household	$120,000	$124,500	$146,000
* Assumes no qualifying dependent child under the age of 17			

Source: KPMG LLP (U.S.)

KPMG NOTE (cont'd)

Given that the driving factor for qualifying for the rebate is AGI, mobility programs might want to consider how an assignment policy influences an employee's AGI and what, if any, responsibilities companies have to make employees "whole" on this rebate. Alternatively, since AGI is calculated net of the foreign earned income exclusion ("FEIE"), employees on international assignments who claim the FEIE may receive rebate checks as a result of their assignment if their stay-at-home income would have exceeded the phase-out limits.

Advance Payment of the Credit and Eligibility

The advance payment of the credit is generally based on an eligible individual's 2019 or 2020 tax return. If an eligible individual who receives an advance payment based on a 2019 tax return is entitled to a larger payment based on the 2020 tax return, the eligible individual will receive another payment making up the difference if the eligible individual's 2020 tax return is processed before July 14, 2021.[6] This determination date may change if the 2020 filing deadline is postponed.[7]

As mentioned, individuals must generally have a valid SSN to be eligible for the credit. However, married couples filing jointly are eligible for a $1,400 credit if one spouse has an SSN and one spouse does not (in addition to $1,400 per dependent with an SSN or ATIN).[8]

Child Tax Credit

The Code generally provides taxpayers with a child tax credit of up to $2,000 per qualifying dependent child under the age of 17 with an SSN. This credit is phased out by $50 for each $1,000 by which a taxpayer's modified AGI ("MAGI") exceeds $200,000 ($400,000 for married couples filing jointly). MAGI for this purpose includes income excluded from AGI under the FEIE. The credit is generally refundable up to $1,400 per qualifying dependent child if the taxpayer has earned income of up to $2,500 and does not claim the FEIE.

The Act provides special, temporary modifications to the child tax credit for the 2021 tax year.

The child tax credit amount is increased to $3,000 per qualifying child age 6 and older and $3,600 per qualifying child under the age of 6. The definition of "qualifying child" is expanded to include a dependent child under the age of 18. For taxpayers with a principal place of abode[9] in the United States for more than one-half of the 2021 tax year, the child tax credit is fully refundable.[10]

The Acts creates a new phase-out range that applies to the increased credit amount allowed under the Act. The increased $1,000 per qualifying child (or $1,600 per qualifying child under age 6) is phased out by $50 for each $1,000 by which a taxpayer's MAGI exceeds $75,000 ($112,500 for head of household; $150,000 for married couples filing jointly). The remaining $2,000 per qualifying child credit is phased out by $50 for each $1,000 by which a taxpayer's MAGI exceeds $200,000 ($400,000 for married couples filing jointly). The Act does not modify the nonrefundable $500 other dependent credit.

KPMG NOTE

To be eligible to claim the FEIE, an assignee must generally not have an abode within the United States (unless the assignee is in a combat zone in support of the U.S. Armed Forces). Thus, individuals who qualify for the FEIE for more

KPMG NOTE (cont'd)

than one-half of the tax year, even if they do not claim the FEIE, will generally not qualify for the increased refundable portion of the child tax credit.

Advanced Periodic Payments

The Act adds a new Code section[11] that directs the Treasury to establish a temporary program for making advanced periodic payments during 2021 to taxpayers equal to what the Treasury estimates to be 50 percent of the refundable child tax credit amount based on the taxpayer's prior year tax return,[12] considering the passage of time with respect to the ages (and status as qualifying children) of the taxpayer's children. These advance payments will be paid in equal installments starting as early as July 1, 2021.

The Act also directs the Treasury to create an on-line information portal where taxpayers may elect to not receive the advanced periodic payments, and make the Treasury aware of any changes during the year that might impact the advanced amount (e.g., birth of qualifying child, change in marital status, change in income).

If a taxpayer receives advance payments in excess of the child tax care credit for the tax year, the taxpayer's U.S. federal income tax liability may be increased by the excess amount received.

Child and Dependent Care Tax Credit

The Code generally provides a nonrefundable credit meant to reimburse taxpayers for certain employment-related child and dependent care expenses. Generally, a taxpayer is allowed a maximum credit of up to 35 percent of $3,000 in expenses for one qualifying individual ($6,000 in expenses for two or more qualifying individuals). A qualifying individual includes a dependent qualifying child under the age of 13, or a spouse or other dependent who is physically or mentally incapable of caring for him- or herself and who has the same principal place of abode as the taxpayer for more than one-half of the tax year. In computing the credit, the $3,000 (or $6,000) expense limitation is reduced by any employer-provided dependent care benefits that are excluded or deducted from a taxpayer's income.

The Act provides special, temporary modifications to the child and dependent care tax credit for the 2021 tax year. For 2021, the dollar limit on employment-related child and dependent care expenses is increased from $3,000 to $8,000 in the case of one qualifying individual and from $6,000 to $16,000 in the case of two or more qualifying individuals. The maximum reimbursement percentage is increased from 35 percent to 50 percent, thus the maximum credit allowed is $4,000 ($8,000 for two or more qualifying individuals).

The Act applies a two-part phase-out to the credit. The 50-percent maximum credit rate is reduced (but not below 20 percent) by one percentage point for each $2,000 a taxpayer's AGI exceeds $125,000. The 20-percent credit rate is reduced (but not below zero) by one percentage point for each $2,000 a taxpayer's AGI exceeds $400,000.

The credit is fully refundable for eligible taxpayers with a principal place of abode in the United States for more than one-half of 2021.

The Act also increases the exclusion for employer-provided dependent care assistance to $10,500 for 2021.

Extension of Limitation on Excess Business Losses for Non-Corporate Taxpayers

The 2017 tax law commonly referred to as the *Tax Cuts and Jobs Act* ("TCJA") disallowed "excess business losses" for tax years beginning after December 31, 2017, and before January 1, 2026. Under the TCJA, excess business losses disallowed under this provision are carried forward as a net operating loss.

The *CARES Act* amended the excess business loss limitation regime to have applicability for any tax years beginning after December 31, 2020, effectively repealing the provision retroactively for tax years beginning prior to January 1, 2021 (impacting calendar years 2018, 2019, and 2020). While the *CARES Act* moved up the regime's starting date, it did not modify the sunset date, meaning the provision would not apply to tax years beginning after December 31, 2025.

The Act extends the regime by one year, through December 31, 2026.

FOOTNOTES:

1 For March 10, 2021 comments by President Biden on passage by the House (White House Briefing Room, "Statement by President Joe Biden on the House Passage of the American Rescue Plan"), click here.

2 KPMG LLP's "The Biden Tax Plans: Several Moving Parts for Global Mobility" webcast hosted on March 1, 2021, explored a number of the provisions included in the House version of the Act. The Act as enacted more closely resembles the Senate version of the Act, however much of the discussion continues to be relevant and may be of interest to program managers.

3 I.R.C. § 6428B.

4 The "Coronavirus Aid, Relief, and Economic Security Act," ("CARES Act") provided a recovery rebate credit of up to $1,200 plus $500 for each qualifying dependent child under the age of 17 with a Social Security Number ("SSN") or Adoption Taxpayer Identification Number ("ATIN"). See *GMS Flash Alert* 2020-127, March 27, 2020, for prior coverage of the CARES Act. The "Consolidated Appropriations Act, 2021" provided a recovery rebate credit of up to $600 plus $600 for each qualifying dependent child under the age of 17 with an SSN or ATIN. (For coverage of the Consolidated Appropriations Act, 2021, see *GMS Flash Alert* 2020-514, December 29, 2020.)

5 It is presently unclear whether the "due date for filing the return for the taxable year" in I.R.C. § 6428B(e)(2)(D) includes extensions.

6 For purposes of the advance payment of the recovery rebate credit, a tax return is not treated as filed until the return has been processed by the IRS.

7 The Act provides that the determination date is the earlier of (i) 90 days after the 2020 filing deadline or (ii) September 1, 2021. Presently, April 15, 2021 is the 2020 filing deadline, and thus the determination date would be July 14, 2021. However, the Treasury has the authority to postpone this deadline due to a federally-declared disaster. If this postponed deadline applies to substantially all returns for the 2020 calendar year which normally have an April 15 deadline, the Act provides that the determination date is 90 days from that postponed deadline if earlier than September 1, 2021.

8 This limitation does not apply for married couples filing jointly where one spouse was a member of the Armed Forces of the United States at any time during 2021.

9 As defined in I.R.C. § 32.

FOOTNOTES (cont'd):

10 In the case of a joint return, only one spouse needs to have a principal place of abode in the United States for more than one-half of the 2021 tax year.

11 I.R.C. § 7527A.

12 If a taxpayer has not filed a return for the prior year, the advance is based on the second preceding calendar year.

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The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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